

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: OFFICE OF CONSUMER ADVOCATE, Complainant, vs. SPRINT COMMUNICATIONS COMPANY, L.P., Respondent.	DOCKET NO. FCU-02-23 (C-02-333)
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**ORDER DENYING PETITION FOR PROCEEDING
TO IMPOSE CIVIL PENALTIES**

(Issued June 24, 2003)

On October 30, 2002, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) a petition for a proceeding to impose civil penalties pursuant to Iowa Code § 476.103, asking that the Board review the proposed resolution in C-02-333, involving Sprint Communications Company, L.P. (Sprint), and consider the possibility of assessing a civil penalty pursuant to Iowa Code § 476.103(4)"a." Based upon the record assembled in the informal complaint proceedings, which are a part of the record in this proceeding pursuant to 199 IAC 6.7, the events to date can be summarized as follows:

On September 27, 2002, Tina Schaffner of Oskaloosa, Iowa, submitted a complaint to the Board against Sprint. Ms. Schaffner alleged that her long distance service was switched to Sprint without her authorization in violation of Iowa Code § 476.103, Iowa's anti-slamming law.

On September 30, 2002, Board staff forwarded Ms. Schaffner's complaint to Sprint and directed Sprint to respond to the allegations on or before October 10, 2002. On October 25, 2002, Board staff issued a proposed resolution stating that Sprint failed to respond to Ms. Schaffner's complaint and, as a result, directed Sprint to refund the charges billed for the change in carrier and fully credit all toll charges on Ms. Schaffner's account. The proposed resolution also prohibited Sprint from attempting to collect any charges from Ms. Schaffner. Board staff proposed that the credits to Ms. Schaffner's account represented a fair resolution of the situation. No other party other than Consumer Advocate has challenged the staff's proposed resolution.

Consumer Advocate argues that Sprint violated Iowa Code § 476.103 by failing to obtain the requisite customer authorization before switching Ms. Schaffner's long distance telephone service and that, as a result of this violation, a civil penalty should be imposed against Sprint. Consumer Advocate argues that if a company is given notice and opportunity for hearing and the Board finds that the anti-slamming statute has been violated, civil penalties are appropriate. Therefore, Consumer Advocate concludes, slamming violations should be processed under § 476.103 and civil penalties should be assessed for every instance of slamming.

The Board does not agree with Consumer Advocate's analysis of § 476.103. Under Consumer Advocate's approach, every single alleged slamming case would be the subject of a civil penalty proceeding, regardless of the facts. This would not be an efficient use of the limited resources available to the Board and the parties and would render the Board's informal complaint process meaningless, contrary to the legislative intent reflected in § 476.103(3)"e" and "g."

Many slamming cases appear to be the result of inadvertent errors that will not be deterred by civil penalties. In such cases, the appropriate resolution is to make the customer whole (since the errors are clearly not the customer's) at the expense of the carrier that committed the errors. Consumer Advocate's proposal would amount to imposing a strict liability standard on all carriers for all unauthorized changes in service, even if there was no reasonable action the carrier could have implemented in order to avoid the unauthorized change. The Board does not believe that the legislature intended to create a strict liability standard.

Instead, the Board finds that a formal proceeding to consider civil penalties should only be initiated when there are reasonable grounds for further investigation; for example, when there is some reason to believe that staff's proposed resolution should be revised or additional penalties should be imposed. In the absence of such a reason, it would be a waste of resources to conduct a formal proceeding. Therefore, any petition for formal proceedings should include a description of how and why the proposed resolution should be changed, a statement of the particular reasons that additional penalties should be imposed, or some other specific

allegation to support the general statement that there are reasonable grounds for further investigation.

The customer's failure to challenge the proposed resolution indicates that the customer is satisfied with the resolution and does not wish to pursue this matter further. Consumer Advocate has not identified any reason to disturb those wishes.

Based on the circumstances described above and Consumer Advocate's request, the Board will deny Consumer Advocate's petition to docket this matter as a formal complaint proceeding.

IT IS THEREFORE ORDERED:

The "Petition for Proceeding to Impose Civil Penalties" filed by the Consumer Advocate Division of the Department of Justice on October 30, 2002, is denied.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Sharon Mayer
Executive Secretary, Assistant to

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 24th day of June, 2003.